

EXHIBIT 1

Joseph Flamini

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<p>SHARMAIN LEWIS :COURT OF COMMON PLEAS Plaintiff :PHILADELPHIA COUNTY : VS. : : NATIONAL BOARD OF : OSTEOPATHIC MEDICAL : EXAMINERS, INC. : Defendant : - - -</p> <p>Oral deposition of JOSEPH FLAMINI, was taken pursuant to notice via Zoom, on Tuesday November 10, 2020, beginning at or about 10:30 a.m. before Jeannine Cancelliere, Court Reporter and Notary Public, there being present. - - -</p> <p>KAPLAN, LEAMAN AND WOLFE Registered Professional Reporters 230 South Broad Street, Suite 1303 Philadelphia, Pennsylvania 19102</p>	<p>1 APPEARANCES: 2 3 STEIN & VARGAS 4 BY: MARY VARGAS, ESQUIRE 5 10 G Street, N.E., Suite 900 6 Washington, DC 20002 7 Phone: (202) 248-5092 8 Representing the Plaintiff 9 mary.vargas@steinvargas.com 10 11 KROGER, GARDIS & REGAS 12 BY: SYDNEY STEELE, ESQUIRE 13 111 Monument Circle, Suite 900 14 Indianapolis, IN 46204 15 Phone: (317) 692-9000 16 Representing the Defendant 17 ssteele@kgirlaw.com 18 19 LAW OFFICES OF CHARLES WEINER 20 BY: CHARLES WEINER, ESQUIRE 21 501 Cambria Avenue 22 Bensalem, PA. 19002 23 Phone: (267) 685-6311 24 Representing the Plaintiff Co-Counsel charles@charlesweinerlaw.com ALSO PRESENT: DOUG MURRAY, ESQUIRE</p>
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<p>1 - - - 2 I N D E X 3 - - - 4 JOSEPH FLAMINI PAGE 5 BY MS. VARGAS 5,161 6 BY MR. STEELE 150 7 - - - 8 E X H I B I T S 9 - - - 10 EXHIBIT NO. DESCRIPTION PAGE 11 Flamini-1 Notice of Deposition 13 12 Of Joseph Flamini 13 Flamini-2 Declaration of Joseph Flamini, 17 14 Lewis v. NBOME 15 Flamini-3 Bulletin of Information 21 16 Flamini-4 Settlement Agreement 65 17 Flamini-5 Declaration of Joseph Flamini 67 18 (Bahl litigation) 19 Flamini-6 Transaction Report 115 20 Flamini-7 Request For Test 123 21 Accommodations Instructions 22 23 24</p>	<p>1 MR. STEELE: I want to be sure 2 that you have on the record the statement that 3 I made before you swore in the witness. 4 This deposition by agreement is limited to 5 matters pertaining to the Motion to Transfer, 6 but it doesn't preclude Plaintiffs from 7 further depositions of the witness unrelated 8 to the Motion to Transfer. 9 Number two, we do object to the 10 Request For Production of documents not in 11 compliance with Rule 34(b)(1) and (a)(2), that 12 nonetheless we did reference Exhibit-A and 13 Exhibit-B through Mr. Flamini's declaration. 14 And that we, of course, reserved 15 all objections regarding relativity of the 16 questions. 17 - - - 18 THE REPORTER: Before I swear in 19 the witness, I will ask counsel to stipulate 20 on the record that due to the current national 21 emergency pandemic, the court reporter, 22 myself, may swear in the deponent, and that 23 there in no objection to that at this time, 24 nor will there be an objection to it at a</p>

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<p>1 A. No.</p> <p>2 Q. If we scroll down to Exhibit-B, which I</p> <p>3 believe begins on page 11 of 19.</p> <p>4 MS. VARGAS: Let's go ahead</p> <p>5 and mark this as Exhibit-2.</p> <p>6 - - -</p> <p>7 (Whereupon, Exhibit Flamini-2 was marked for</p> <p>8 identification.)</p> <p>9 - - -</p> <p>10 MR. STEELE: Are you referring</p> <p>11 to the whole declaration?</p> <p>12 BY MS. VARGAS:</p> <p>13 Q. The whole declaration, yeah.</p> <p>14 Looking at what I believe</p> <p>15 is -- starting on page 11 of 19, a student who</p> <p>16 was registering for the COMLEX on NBOME</p> <p>17 website, would they see everything that</p> <p>18 appears on page 11 of 19?</p> <p>19 A. Yes, they would.</p> <p>20 Q. Would they see the red arrow pointing?</p> <p>21 A. No.</p> <p>22 Q. Would they see the words where the red</p> <p>23 arrows originates?</p> <p>24 A. No, you're referring to this tab that</p>	<p>1 allows candidates -- no, they would not see</p> <p>2 that.</p> <p>3 Q. Would they see the text that is at the</p> <p>4 top of the page beginning, The NBOME Exam</p> <p>5 Purchase Process, and ending with screen 1?</p> <p>6 A. No.</p> <p>7 Q. So a medical student registering for a</p> <p>8 COMLEX, is this what they would have seen when</p> <p>9 they registered?</p> <p>10 A. They would have seen everything that</p> <p>11 captures the screenshot that begins with the</p> <p>12 NBOME logo. They would not see the arrow that</p> <p>13 points down or the comment next to it, but</p> <p>14 they would see everything else below the NBOME</p> <p>15 logo.</p> <p>16 Q. What was the date of this screenshot?</p> <p>17 A. I am not sure that I have that date. I</p> <p>18 do not have that date. That date was captured</p> <p>19 in the last three months. This screenshot was</p> <p>20 captured in the last three months.</p> <p>21 Q. This is since July 2020?</p> <p>22 A. Yes.</p> <p>23 Q. So a student registering for NBOME prior</p> <p>24 to July 2020 would not have seen this exact --</p>
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<p>1 this is not the exact screen they would have</p> <p>2 seen?</p> <p>3 A. I believe it is. I don't know about the</p> <p>4 word exact, but it is extremely similar. The</p> <p>5 system has not changed significantly in any</p> <p>6 way over those years.</p> <p>7 Q. I guess what I am saying is, what we see</p> <p>8 at page 11 is not the same thing that a</p> <p>9 student would have seen in 2017?</p> <p>10 A. If you take it to the exact precision</p> <p>11 that every single font and everything is</p> <p>12 exact, then the answer to that is you're</p> <p>13 correct. They may not have seen, but I will</p> <p>14 tell you that the system has been in place and</p> <p>15 has been virtually this, almost identical, and</p> <p>16 perhaps identical over those years. They</p> <p>17 would have seen the same thing. We have not</p> <p>18 made dramatic changes.</p> <p>19 Q. Substantively, what we see on page 11 of</p> <p>20 this exhibit is not what a student would have</p> <p>21 seen in 2017?</p> <p>22 A. Correct. Substantively, they would have</p> <p>23 seen the same screen.</p> <p>24 Q. In 2017, you would have told students</p>	<p>1 about COVID-19?</p> <p>2 A. No.</p> <p>3 Q. So it is not the same, right?</p> <p>4 A. That is true. I am talking about the</p> <p>5 structure of the page, the way a student comes</p> <p>6 in and registers for an exam.</p> <p>7 Q. So is it fair to say that some of what</p> <p>8 we see at page 11 is the same and some of it</p> <p>9 isn't?</p> <p>10 A. Certainly, something like COVID-19</p> <p>11 wouldn't be here.</p> <p>12 Q. We will come back to this later. I</p> <p>13 would like to stop this screen share.</p> <p>14 What I have put on the screen</p> <p>15 is titled, NBOME COMLEX USA Bulletin of</p> <p>16 Information.</p> <p>17 Do you have a copy of that</p> <p>18 exhibit in front of you?</p> <p>19 A. I do. Let me pull it out here.</p> <p>20 Q. It's rather lengthy. I am happy to</p> <p>21 scroll through on the screen, but I think it</p> <p>22 might be easier for you if you have the</p> <p>23 document in front of you.</p> <p>24 A. I have my document in front of me.</p>

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<p>1 Q. Can you explain to me what this is?</p> <p>2 A. This is the legal document that controls</p> <p>3 the administration of our COMLEX USA series of</p> <p>4 examinations.</p> <p>5 Q. The copy that I am showing on the screen</p> <p>6 and that was provided to your counsel this</p> <p>7 morning, is that the copy that you have in</p> <p>8 front of you?</p> <p>9 A. It appears to be. It's effective</p> <p>10 7/1/2020.</p> <p>11 Q. Does this appear to you to be a true and</p> <p>12 correct copy of the NBOME Bulletin of</p> <p>13 Information?</p> <p>14 A. From what I can see so far, what you</p> <p>15 have is what I have, so yes.</p> <p>16 MS. VARGAS: Let's mark this</p> <p>17 as Exhibit Number 3.</p> <p>18 - - -</p> <p>19 (Whereupon, Exhibit Flamini-3 was marked for</p> <p>20 identification.)</p> <p>21 - - -</p> <p>22 BY MS. VARGAS:</p> <p>23 Q. Mr. Flamini, can you explain to me what</p> <p>24 this is?</p>	<p>1 A. What the document is?</p> <p>2 Q. Yes.</p> <p>3 A. This is the document that we used at --</p> <p>4 it spells out all of the conditions for a</p> <p>5 candidate to take the COMLEX USA series of</p> <p>6 examinations, the four examinations that</p> <p>7 comprise the series.</p> <p>8 Q. At the bottom of this page, can you</p> <p>9 explain to me the two last lines of text, what</p> <p>10 that means?</p> <p>11 A. The two lines of text?</p> <p>12 Q. Yes, the last two lines of the first</p> <p>13 page.</p> <p>14 A. What mine reads is: 2020 to 2021 COMLEX</p> <p>15 USA Bulletin of Information, effective July</p> <p>16 1st, 2020.</p> <p>17 So that line ensures the</p> <p>18 candidate knows what version of the document</p> <p>19 they're looking at.</p> <p>20 The second line says, it's a</p> <p>21 copyrighted document for the National Board of</p> <p>22 Osteopathic Medical Examiners with all rights</p> <p>23 reserved.</p> <p>24 Q. We talked about this a little bit</p>
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<p>1 before.</p> <p>2 Is it fair to say then that</p> <p>3 every year there is a different Bulletin of</p> <p>4 Information?</p> <p>5 A. There are changes each year, format</p> <p>6 and/or some substance.</p> <p>7 Q. Explain to me, how does a student</p> <p>8 register with NBOME?</p> <p>9 A. How they register for our COMLEX USA</p> <p>10 examinations?</p> <p>11 Q. Yes.</p> <p>12 A. They enter into what is known as our</p> <p>13 CRS, which we call our portal. That is not</p> <p>14 our website. Our website is probably where</p> <p>15 you pulled this document, if you pull it down,</p> <p>16 if you look at it.</p> <p>17 It is the portal where</p> <p>18 candidates enter, where deans enter, and where</p> <p>19 administrators enter to look at registration</p> <p>20 information.</p> <p>21 The candidate would go into</p> <p>22 that portal and create an account to register</p> <p>23 for our exams.</p> <p>24 Q. Do students have to register before</p>	<p>1 requesting accommodations?</p> <p>2 A. Yes.</p> <p>3 Q. Is it possible to request accommodations</p> <p>4 without registering?</p> <p>5 A. No.</p> <p>6 Q. What would happen if a student requested</p> <p>7 accommodations and they hadn't registered?</p> <p>8 A. My staff in accommodations would refer</p> <p>9 them back to register for the exam prior to</p> <p>10 any action taken with reviewing their</p> <p>11 application for accommodation.</p> <p>12 Q. So at the time that a student registers,</p> <p>13 they wouldn't know whether or not they would</p> <p>14 be receiving accommodations that they might</p> <p>15 request; is that right?</p> <p>16 A. That is true.</p> <p>17 Q. And is there any time limit that</p> <p>18 candidates have between the time they register</p> <p>19 and the time that they would, say, seek</p> <p>20 accommodations?</p> <p>21 A. Any time -- can you be more specific?</p> <p>22 Q. Sure. When a student registers, if they</p> <p>23 are going to seek accommodations, do they have</p> <p>24 to do that immediately?</p>

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<p>1 A. No. They could register and wait a 2 period of time, and then apply for 3 accommodations. 4 Q. How long could they wait? 5 A. There is no limit from the standpoint of 6 accommodations. If they wanted to wait 7 several years, they could. It is the reverse 8 that when they come in and ask for the 9 accommodation, we simply look to make sure 10 they are registered in our system. 11 Q. Let me back up a little bit. I don't 12 think we ever even talked about what your 13 official position is with the NBOME. 14 Can you tell me what your job 15 title is? 16 A. Vice president for administration and 17 chief operating officer. 18 Q. What are your responsibilities with 19 NBOME? 20 A. Responsibilities include all things 21 legal, testing accommodations, facilities, 22 information systems, and marketing and 23 communications. 24 Q. Where is your position based?</p>	<p>1 A. In Philadelphia. Excuse me, in the 2 Philadelphia area. Our office is in 3 Conshohocken, Pennsylvania. 4 Q. Tell me a little bit about the 5 Conshohocken office. 6 Is that where the executive 7 officers all are located? 8 A. Philadelphia is the home of the 9 executive offices. That means that the CEO 10 and myself are here. Some of our vice 11 presidents are here, and as you probably know, 12 we have an office in Chicago where some of our 13 other staff are located. 14 Q. What is the COMLEX? 15 A. COMLEX is an examination which allows a 16 student to demonstrate their proficiency, 17 their knowledge, minimal competency to move 18 forward in their education, to graduate from 19 medical school. 20 And the third piece of the 21 examination, the Level 3, actually allows them 22 to get licensure in all 50 states in the 23 United States. 24 Q. Does the NBOME license medical</p>
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<p>1 professionals? 2 A. Never. 3 Q. Can a medical student graduate medical 4 school without taking and passing COMLEX 1? 5 A. No. 6 Q. Can a medical student graduate medical 7 school without taking and passing either of 8 the COMLEX 2 tests? 9 A. I will just tell you that the answer to 10 that has been no. There is an interim COVID 11 situation right now as we speak where the 12 accreditation council has allowed flexibility 13 in that for the COMs, but traditionally the 14 answer to that question is no, you cannot 15 graduate. 16 Q. Just to be clear, the flexibility with 17 respect to COMLEX 2, is that with respect to 18 both COMLEX 2 tests? 19 A. It is only the Level 2-PE examination. 20 Q. Tell me about -- maybe if you could 21 explain the two different tests, that would be 22 helpful? 23 A. There are a total of four examinations 24 in the COMLEX series: Level 1, Level 2, CE is</p>	<p>1 another computer-based. Those first two are 2 computer-based exams. Candidates go to 3 testing centers and take those exams. And 4 Level 3 is another computer-based exam. 5 The Level 2-PE is a clinical 6 skills exam. Students come to one of our two 7 centers and run through a series of simulated 8 encounters with patients, 12 encounters, and 9 that is not computer-based. That is an actual 10 onsite demonstration of proficiency. 11 Q. A medical student even after COVID would 12 have to take and pass the COMLEX 1 and the 13 COMLEX 2-CE in order to graduate medical 14 school; is that right? 15 A. That's correct. 16 Q. Does anyone other than NBOME offer the 17 COMLEX 1 and 2? 18 A. It depends. You're asking that of 19 osteopathic students. I'll just clarify that. 20 There is another organization 21 that you're probably aware of that does the 22 same thing we do for allopathic students, the 23 NBME. 24 Q. I am very familiar. Thank you.</p>

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<p>1 A. Osteopathic students must take our 2 examination in order to graduate. 3 Q. I am only going to be asking about 4 osteopathic students today. 5 So for osteopathic students, 6 just to be clear, they have to take and pass 7 the COMLEX 1 and the COMLEX 2-CE in order to 8 graduate medical school. And you're the only 9 game in town? You're the only ones that offer 10 that exam? 11 A. That's correct. 12 Q. So then going back to when a student 13 registers with the NBOME for the first time, 14 walk me through what a student would have to 15 do in order to register? 16 A. A student would come to our, what we 17 call portal, our client registration system, 18 and enter that system. 19 They would do that by coming 20 through our main website, and you enter in 21 some information to jump into our registration 22 system. 23 The page you showed on 24 page 11 of 19 is the screen that they would</p>	<p>1 enter, and they would have to put in their 2 name, their passwords, their ID that they want 3 to be known as in the system. 4 Some of the information would 5 have been populated by their college of 6 osteopathic medicine, a couple of points, but 7 they have to go in and answer all of the 8 questions that are there, all of the blank 9 fields, the address that they want, ZIP Codes, 10 and then in order to register, they would need 11 to agree to the terms and conditions that are 12 part of the Bulletin of Information. 13 Q. Is there an option for a student to 14 alter those terms? 15 A. No, there is not. 16 Q. Is there an option that allows a student 17 not to agree to those terms? 18 A. There is an option that says, if you 19 have questions, you may call this number, but 20 if you do not agree to those terms, you cannot 21 complete your registration process. 22 Q. Can you take the COMLEX without 23 completing the registration process? 24 A. No.</p>
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<p>1 Q. Can you request accommodations without 2 completing the registration process? 3 A. No. 4 Q. Is it fair to say that if a student 5 doesn't agree with the terms the NBOME lays 6 out, that they cannot become a doctor? 7 A. They cannot take our exam -- they cannot 8 complete our examination to become a doctor, 9 that is true. 10 Q. At what point in a student's medical 11 career do they typically register with the 12 NBOME for the first time? 13 A. They register around the beginning of 14 their second year in med school. 15 Q. Does that differ slightly for different 16 schools? 17 A. I think there is some variation. Some 18 of the schools look to have their students 19 test at different times, so then the 20 registration is slightly different. 21 Some schools are a little bit 22 more aggressive in terms of how early they 23 test, yes. 24 Q. At the time a student first registers</p>	<p>1 with the NBOME, they would at a minimum 2 already have completed their first year of 3 medical school, right? 4 A. Yes. 5 Q. Do you have any idea what the cost 6 generally is for each year of medical school? 7 A. My knowledge is not based on each year, 8 but in total, I know a candidate will spend a 9 quarter million or more to complete the four 10 years of education. 11 Q. At the time that a student enters 12 medical school, have they had an opportunity 13 to review the terms and conditions that you 14 were going to require of them in order to take 15 the COMLEX? 16 A. Did you say, do they have the ability? 17 Q. Has it been provided to them? 18 A. Would you repeat that statement -- 19 Q. Sure, that was badly worded. 20 So does the NBOME contact 21 medical students prior to the time they start 22 medical school to let them know the terms and 23 conditions that they have to agree to if they 24 want to become a doctor?</p>

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<p>1 A. We do not contact potential medical</p> <p>2 students in any way, no.</p> <p>3 Q. Looking back at Exhibit-3, which is the</p> <p>4 Bulletin of Information, can you explain to me</p> <p>5 how this factors into the registration</p> <p>6 process?</p> <p>7 A. As you register for the exam, you have</p> <p>8 the opportunity to review the Bulletin of</p> <p>9 Information. There is a link in the</p> <p>10 registration process that connects you back to</p> <p>11 the bulletin, and you get the full Bulletin of</p> <p>12 Information.</p> <p>13 Q. How many pages is the Bulletin of</p> <p>14 Information at Exhibit-3?</p> <p>15 A. I will take a quick look and see what my</p> <p>16 document shows. It reveals 45 pages.</p> <p>17 Q. So when a student registers, do they</p> <p>18 have to review all 45 pages in order to</p> <p>19 register?</p> <p>20 A. There is no requirement that they review</p> <p>21 all 45 pages.</p> <p>22 Q. What do they have to review in order to</p> <p>23 register?</p> <p>24 A. What's most important is the terms and</p>	<p>1 conditions, which are displayed clearly in</p> <p>2 front of them. It's not just a reference to</p> <p>3 the bulletin. The actual terms and conditions</p> <p>4 appear on the screen. You don't have to go</p> <p>5 search for it. It is pushed right in front of</p> <p>6 you. And they must agree to those terms and</p> <p>7 conditions, the first of which mentions the</p> <p>8 full Bulletin of Information.</p> <p>9 Q. The terms and conditions that appear on</p> <p>10 the screen, do you know what font those terms</p> <p>11 and conditions appear in?</p> <p>12 A. I do not. I cannot tell you the exact</p> <p>13 font.</p> <p>14 Q. Is that something that you would be able</p> <p>15 to find out when the deposition ends and let</p> <p>16 your counsel know so they can get back to us.</p> <p>17 MR. STEELE: What is the</p> <p>18 question? The font of what?</p> <p>19 MS. VARGAS: The font of the</p> <p>20 terms and conditions as they appear on the</p> <p>21 screen.</p> <p>22 THE WITNESS: In the Bulletin</p> <p>23 of Information?</p> <p>24 MS. VARGAS: Yes.</p>
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<p>1 THE WITNESS: We can</p> <p>2 certainly provide that. I will tell you</p> <p>3 again, recently I went through the process. I</p> <p>4 will tell you it is not what you see on some</p> <p>5 websites that are very tiny, small print.</p> <p>6 It's easy to read. But yes, we can provide</p> <p>7 you the exact font.</p> <p>8 BY MS. VARGAS:</p> <p>9 Q. Looking on page 5 of the Bulletin of</p> <p>10 Information, at the top of that page, it says,</p> <p>11 Terms and Conditions, is this what you were</p> <p>12 referring to a moment ago?</p> <p>13 A. Yes, it is.</p> <p>14 Q. So a student -- these terms and</p> <p>15 conditions would appear on the screen for the</p> <p>16 student?</p> <p>17 A. That's correct.</p> <p>18 Q. They would have to agree to these terms</p> <p>19 and conditions in order to register with the</p> <p>20 NBOME?</p> <p>21 A. That's correct.</p> <p>22 Q. There is no alternative?</p> <p>23 A. No.</p> <p>24 Q. They don't have any choice?</p>	<p>1 A. There is an option for if they have</p> <p>2 questions about terms and conditions to get</p> <p>3 more information, but eventually, in order to</p> <p>4 register, you must agree.</p> <p>5 Q. And that option to ask questions, who</p> <p>6 answers those questions?</p> <p>7 A. Those would come through, I believe, it</p> <p>8 connects you to our client services, and that</p> <p>9 would be my staff.</p> <p>10 Q. Where is your client services based?</p> <p>11 A. They are based in Chicago. They are, I</p> <p>12 should say, based both in Chicago and there is</p> <p>13 some staff here in Philadelphia.</p> <p>14 Conshohocken.</p> <p>15 Q. So it's fair to say that some of the</p> <p>16 folks who answer those questions might be in</p> <p>17 Pennsylvania?</p> <p>18 A. Yes.</p> <p>19 Q. Looking at page 5, I am going to ask you</p> <p>20 to walk me through what each of these numbered</p> <p>21 paragraphs -- if you could explain to me what</p> <p>22 each of them provides, starting with paragraph</p> <p>23 1?</p> <p>24 A. Paragraph 1, Bulletin of Information, is</p>

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<p>1 Q. What would that benefit be?</p> <p>2 A. Providing some limits to what actions</p> <p>3 the student would take.</p> <p>4 Q. Would paragraph 7 release the NBOME from</p> <p>5 liability for bad acts?</p> <p>6 A. I don't know that I would say that. I</p> <p>7 need further definition of bad acts.</p> <p>8 Q. If the NBOME did something in violation</p> <p>9 of law, would paragraph 7 release them from</p> <p>10 liability for those violations of law?</p> <p>11 MR. STEELE: Objection. You</p> <p>12 haven't defined the term. You haven't defined</p> <p>13 what violation there may be. It's highly</p> <p>14 speculative.</p> <p>15 THE WITNESS: I am having</p> <p>16 difficulty answering that because of that. If</p> <p>17 I had a specific example, perhaps I could.</p> <p>18 BY MS. VARGAS:</p> <p>19 Q. Is it fair to say that it is difficult</p> <p>20 to know what paragraph 7 actually means?</p> <p>21 A. No, I think there is a general sense of</p> <p>22 what it means, but when you get into the</p> <p>23 specifics, you certainly would need some</p> <p>24 guidance.</p>	<p>1 Q. When you say, in a general sense, you</p> <p>2 know what it means.</p> <p>3 In a general sense, what does</p> <p>4 it mean?</p> <p>5 A. I think it means, as it states here,</p> <p>6 that they are releasing and discharging the</p> <p>7 NBOME from prior acts and claims.</p> <p>8 Q. Does paragraph 7 explain how it applies</p> <p>9 in individual circumstances?</p> <p>10 A. Again, in individual circumstances, you</p> <p>11 have to be more specific.</p> <p>12 Q. Let's move on to paragraph 8.</p> <p>13 What does paragraph 8 mean?</p> <p>14 A. Paragraph 8 summarizes that the Bulletin</p> <p>15 of Information is governed and construed under</p> <p>16 the laws and the State of Indiana.</p> <p>17 Q. Why does the NBOME want the Bulletin of</p> <p>18 Information to be construed under the laws of</p> <p>19 the State of Indiana?</p> <p>20 A. We provide examinations to students from</p> <p>21 all over the country, you know, testing</p> <p>22 centers all over the country, and it's to</p> <p>23 provide some consistency that it's addressed</p> <p>24 in one format that is possible for us to</p>
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<p>1 manage.</p> <p>2 Q. Why do you choose specifically that that</p> <p>3 one format is Indiana, rather than someplace</p> <p>4 else?</p> <p>5 A. Indiana is the state we're incorporated</p> <p>6 in.</p> <p>7 Q. What do you have actually physically in</p> <p>8 the State of Indiana?</p> <p>9 A. We don't have any physical facilities.</p> <p>10 MR. STEELE: Besides me.</p> <p>11 THE WITNESS: Our general</p> <p>12 counsel.</p> <p>13 BY MS. VARGAS:</p> <p>14 Q. Mr. Steele. Is it fair to say he is</p> <p>15 your outside counsel at the NBOME?</p> <p>16 A. Yes.</p> <p>17 Q. Where is your general counsel located?</p> <p>18 A. Here in Conshohocken office.</p> <p>19 Q. And that is Mr. Murray?</p> <p>20 A. That's correct.</p> <p>21 Q. Do you know where Mr. Murray is licensed</p> <p>22 to practice law?</p> <p>23 A. In the State of Pennsylvania, I know he</p> <p>24 is.</p>	<p>1 Q. Is he licensed to practice law in the</p> <p>2 State of Indiana?</p> <p>3 A. I don't believe he is.</p> <p>4 Q. Are there any reasons other than the</p> <p>5 ones you have mentioned why you choose Indiana</p> <p>6 rather than, say, Pennsylvania?</p> <p>7 A. No, just centrally located in the United</p> <p>8 States. It's close to our Chicago office.</p> <p>9 Q. How far is Marion County from your</p> <p>10 Chicago office?</p> <p>11 A. A couple hours, at most.</p> <p>12 Q. How far is the executive office of the</p> <p>13 NBOME in Conshohocken from the U.S. federal</p> <p>14 courthouse in Philadelphia?</p> <p>15 A. It depends on traffic.</p> <p>16 Q. How many miles?</p> <p>17 A. Seriously, I would say it's about</p> <p>18 15 miles away, down the Schuylkill.</p> <p>19 Q. Is there a reason why the U.S. federal</p> <p>20 courthouse in Philadelphia would not be</p> <p>21 convenient for you?</p> <p>22 A. I think we have chosen Marion County.</p> <p>23 It has been historical for us. We have always</p> <p>24 used that one site for consistency.</p>

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<p>1 MS. VARGAS: I would like to</p> <p>2 have this marked as Exhibit-4.</p> <p>3 - - -</p> <p>4 (Whereupon, Exhibit Flamini-4 was marked for</p> <p>5 identification.)</p> <p>6 - - -</p> <p>7 BY MS. VARGAS:</p> <p>8 Q. Can you tell me generally what the</p> <p>9 situation was between Mr. Bahl and the NBOME</p> <p>10 that resulted in this settlement?</p> <p>11 A. Actually, it goes back several years to</p> <p>12 say the least. I am just actually reading</p> <p>13 this section here to remind me, to refresh my</p> <p>14 memory.</p> <p>15 It involved him taking our</p> <p>16 Level 2 examination, and he breached his</p> <p>17 obligation to sue us in Indiana.</p> <p>18 Q. Where did he file suit against the</p> <p>19 NBOME?</p> <p>20 A. I must say, I do not recall the exact</p> <p>21 location.</p> <p>22 Q. Do you recall what he filed suit for?</p> <p>23 A. I do not. I wouldn't want to guess. I</p> <p>24 certainly remember the Ajay Bahl case in</p>	<p>1 general terms. I would need to refresh to</p> <p>2 answer your question.</p> <p>3 Q. Do you recall if Ajay Bahl sought</p> <p>4 accommodations from NBOME for his COMLEX</p> <p>5 examinations?</p> <p>6 A. I would be guessing to say to you, yes,</p> <p>7 so I don't want to say yes. But I would want</p> <p>8 to refresh my memory on this particular case</p> <p>9 from several years ago.</p> <p>10 Q. Did you complete declarations that were</p> <p>11 submitted to the court in the Ajay Bahl</p> <p>12 litigation?</p> <p>13 A. I believe I would have. I don't recall</p> <p>14 them in detail, though.</p> <p>15 Q. I have shared a document that has a</p> <p>16 court stamp at the top, 42-2: United States</p> <p>17 District Court for the Eastern District of New</p> <p>18 York. John Doe v. New York College of</p> <p>19 Osteopathic Medicine, the National Board of</p> <p>20 Osteopathic Medical Examiners, and two other</p> <p>21 entities. And it's titled: Declaration of</p> <p>22 Joseph Flamini.</p> <p>23 Do you recognize this</p> <p>24 document?</p>
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<p>1 A. I do, Mary. Can you enlarge it a</p> <p>2 little?</p> <p>3 Yes. Again, I am familiar.</p> <p>4 I couldn't spell out all of the details to you</p> <p>5 off the top of my head, but I am familiar.</p> <p>6 Q. I am going to scroll down to the end.</p> <p>7 Is that your signature that</p> <p>8 appears on page 8?</p> <p>9 A. Yes, it is.</p> <p>10 MS. VARGAS: So if we can</p> <p>11 have this marked as Exhibit-5, please.</p> <p>12 - - -</p> <p>13 (Whereupon, Exhibit Flamini-5 was marked for</p> <p>14 identification.)</p> <p>15 - - -</p> <p>16 BY MS. VARGAS:</p> <p>17 Q. Do you agree that it appears -- does</p> <p>18 this document refresh your recollection about</p> <p>19 the circumstances of Mr. Bahl suing the NBOME?</p> <p>20 A. It begins to, but I would have to take a</p> <p>21 minute and read it. You asked -- let me just</p> <p>22 take a look here. I have just read 22 and 23.</p> <p>23 MR. STEELE: What is the</p> <p>24 question pending?</p>	<p>1 BY MS. VARGAS:</p> <p>2 Q. I asked if this refreshed his</p> <p>3 recollection about what Mr. Bahl filed suit</p> <p>4 against the NBOME for?</p> <p>5 A. As I read each section, I do recall.</p> <p>6 Q. What was it about? What was the case</p> <p>7 about, just generally?</p> <p>8 A. It was about accommodation, and</p> <p>9 specifically, the Level 2-PE, asking for more</p> <p>10 time for a SOAP note.</p> <p>11 Q. Is it accurate that Mr. Bahl is a</p> <p>12 medical student who filed suit about his</p> <p>13 request for accommodations that was denied in</p> <p>14 New York; is that accurate?</p> <p>15 A. Yes.</p> <p>16 Q. And then the NBOME moved to transfer Mr.</p> <p>17 Bahl's suit to Indiana; is that right?</p> <p>18 A. Yes.</p> <p>19 Q. After the transfer, did the NBOME then</p> <p>20 seek attorney's fees and costs from this</p> <p>21 medical student?</p> <p>22 A. I recall we sought a settlement with</p> <p>23 him, which that Settlement Agreement laid out.</p> <p>24 Q. Let's go back to that. So going back to</p>

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<p style="text-align: right;">Page 85</p> <p>1 violated the Bulletin of Information?</p> <p>2 A. The NBOME would determine what she was</p> <p>3 in violation of.</p> <p>4 Q. To be clear, I don't want to know about</p> <p>5 anything you discussed, any conversations you</p> <p>6 had with your attorney, I am asking for a very</p> <p>7 discrete, simple fact.</p> <p>8 What is hourly rate that the</p> <p>9 NBOME pays its attorneys in disability</p> <p>10 discrimination litigation?</p> <p>11 A. The hourly rate? I would have to look</p> <p>12 back at previous invoices to see what that</p> <p>13 number was.</p> <p>14 Q. Do you have a sense of the ballpark</p> <p>15 hourly rate?</p> <p>16 A. I would pick a number and say \$200 an</p> <p>17 hour.</p> <p>18 Q. Is there anywhere in the Bulletin of</p> <p>19 Information where it advises students what the</p> <p>20 hourly rates are for the attorneys at the</p> <p>21 NBOME?</p> <p>22 A. Not to the best of my knowledge.</p> <p>23 Q. Is there any way a student would know</p> <p>24 how much they were agreeing to pay in</p>	<p style="text-align: right;">Page 86</p> <p>1 attorney's fees and costs if they were to file</p> <p>2 somewhere other than Indiana?</p> <p>3 A. Repeat the question.</p> <p>4 Q. Is there any way a student like Ms.</p> <p>5 Lewis -- let's just talk about Ms. Lewis -- is</p> <p>6 there any way Ms. Lewis could know if she</p> <p>7 filed a lawsuit in the Eastern District of</p> <p>8 Pennsylvania rather than Indiana, how much she</p> <p>9 would have to potentially pay for attorney's</p> <p>10 fees and costs if the case was transferred</p> <p>11 back to Indiana?</p> <p>12 A. I don't know that I can answer that</p> <p>13 question.</p> <p>14 Q. Would you agree it is sort of a blank</p> <p>15 check?</p> <p>16 A. No, but she would need to do some</p> <p>17 investigation.</p> <p>18 Q. What kind of investigation could Ms.</p> <p>19 Lewis do to find out Mr. Steele's hourly rate?</p> <p>20 A. She would probably contact her attorney</p> <p>21 and ask them for guidance.</p> <p>22 Q. So she would have to have an attorney in</p> <p>23 order to find out what liability this</p> <p>24 agreement was subjecting her to?</p>
<p style="text-align: right;">Page 87</p> <p>1 MR. STEELE: That wasn't the</p> <p>2 question. The question was the attorney's</p> <p>3 fees.</p> <p>4 MS. VARGAS: Right.</p> <p>5 MR. STEELE: Her attorney's</p> <p>6 fees, she would need to get some guidance,</p> <p>7 whether it is an attorney or not.</p> <p>8 BY MS. VARGAS:</p> <p>9 Q. That information is not in the Bulletin</p> <p>10 of Information, right?</p> <p>11 A. It is not.</p> <p>12 Q. Is there anything in paragraph 11 that</p> <p>13 would benefit a medical student agreeing to</p> <p>14 the Bulletin of Information?</p> <p>15 MR. STEELE: Other than</p> <p>16 benefits of taking the exam?</p> <p>17 THE WITNESS: I think it is</p> <p>18 taking the exam, and I think as I stated</p> <p>19 already to ensure fairness in the exam, the</p> <p>20 benefit to the student to know they're taking</p> <p>21 a fair examination.</p> <p>22 BY MS. VARGAS:</p> <p>23 Q. Can you explain how it benefits a</p> <p>24 student to know that they will have to pay</p>	<p style="text-align: right;">Page 88</p> <p>1 attorney's fees to the NBOME if they file suit</p> <p>2 other than in Indiana?</p> <p>3 MR. STEELE: I'm sorry, I</p> <p>4 thought you said paragraph 10.</p> <p>5 MS. VARGAS: Looking at</p> <p>6 paragraph 11.</p> <p>7 MR. STEELE: I'm sorry, I</p> <p>8 thought you said paragraph 10. Could you</p> <p>9 restate the question.</p> <p>10 BY MS. VARGAS:</p> <p>11 Q. Making sure we're both talking about the</p> <p>12 same thing, for paragraph 11, is there any</p> <p>13 benefit to the medical student?</p> <p>14 A. Yeah, I think it states the same. It is</p> <p>15 the opportunity that a candidate must follow</p> <p>16 the BOI, and that includes issues of fairness</p> <p>17 and confidentiality. That is a benefit to a</p> <p>18 student, that I know that my examination is</p> <p>19 fair.</p> <p>20 Q. In your opinion, does the NBOME and</p> <p>21 medical students, do they have equal</p> <p>22 bargaining power?</p> <p>23 A. I'm not sure what you even mean by that</p> <p>24 question. Do they have equal bargaining</p>

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<p>1 your request.</p> <p>2 BY MS. VARGAS:</p> <p>3 Q. Mr. Flamini, does the NBOME have any</p> <p>4 employees in Indiana?</p> <p>5 A. No.</p> <p>6 Q. At the time that Ms. Lewis requested</p> <p>7 accommodations, was there anything to indicate</p> <p>8 what, if any, terms and conditions she was</p> <p>9 agreeing to?</p> <p>10 MR. STEELE: Would you read</p> <p>11 the question back, please?</p> <p>12 - - -</p> <p>13 (Whereupon the Court Reporter read back the</p> <p>14 testimony.)</p> <p>15 - - -</p> <p>16 THE WITNESS: Again, similar</p> <p>17 to this document, we would go back to the date</p> <p>18 she requested, and be able to tell you what</p> <p>19 the terms and conditions were at that time.</p> <p>20 BY MS. VARGAS:</p> <p>21 Q. I am asking a different question. I am</p> <p>22 not asking what you could sort of track down.</p> <p>23 I am asking from the</p> <p>24 perspective of Ms. Lewis, at the time that she</p>	<p>1 requested accommodations, was there anything</p> <p>2 indicating what she was agreeing to in an</p> <p>3 exchange for asking for accommodations under</p> <p>4 federal law?</p> <p>5 A. I am not clear on what your question is.</p> <p>6 MR. STEELE: Let me object to</p> <p>7 the form of the question.</p> <p>8 BY MS. VARGAS:</p> <p>9 Q. Is there anywhere on the -- on a request</p> <p>10 for accommodations that it specifies what</p> <p>11 terms and conditions the medical student is</p> <p>12 agreeing to or is that only on the</p> <p>13 registration?</p> <p>14 A. I would have to look at the application.</p> <p>15 The Bulletin of Information may specify that</p> <p>16 also, but I do not know off the top of my</p> <p>17 head.</p> <p>18 MS. VARGAS: If you wouldn't</p> <p>19 mind turning off your screen share, because I</p> <p>20 don't know if we can both do it at the same</p> <p>21 time.</p> <p>22 BY MS. VARGAS:</p> <p>23 Q. I put up on the screen a document</p> <p>24 entitled NBOME, National Board of Osteopathic</p>
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<p>1 Medical Examiners, Request For Test</p> <p>2 Accommodations Instructions.</p> <p>3 Are you familiar with this</p> <p>4 document?</p> <p>5 A. I am familiar, not in detail, but yes,</p> <p>6 this is what she would click on to get</p> <p>7 information.</p> <p>8 Can you enlarge it a little</p> <p>9 bit?</p> <p>10 Yes, I recognize it, I don't</p> <p>11 know every detail from it, but I recognize it.</p> <p>12 MS. VARGAS: Why don't we</p> <p>13 mark this as Exhibit-7 -- or is it Exhibit-8?</p> <p>14 - - -</p> <p>15 (Whereupon, Exhibit Flamini-7 was marked for</p> <p>16 identification.)</p> <p>17 - - -</p> <p>18 MR. STEELE: Can the reporter</p> <p>19 e-mail those to me?</p> <p>20 MS. VARGAS: Afterwards, I am</p> <p>21 going to e-mail a complete set of everything I</p> <p>22 have, so we're all clear on the same</p> <p>23 exhibits -- after we all have the real</p> <p>24 documents that were referenced.</p>	<p>1 MR. STEELE: Would that</p> <p>2 include Exhibit-6 that I just e-mailed?</p> <p>3 MS. VARGAS: You will</p> <p>4 provide -- you have -- you said you provided</p> <p>5 to me -- I haven't gotten it yet in my e-mail.</p> <p>6 So if I already got it, when this is done, I</p> <p>7 will include that in the packet and provide</p> <p>8 that to everyone.</p> <p>9 MR. STEELE: If not, let me</p> <p>10 know no.</p> <p>11 MS. VARGAS: Okay. Sounds</p> <p>12 good.</p> <p>13 BY MS. VARGAS:</p> <p>14 Q. Mr. Flamini, looking at page 1 of the</p> <p>15 Request For Test Accommodations, of the</p> <p>16 exhibit's page 2, because the first page is</p> <p>17 the document cover sheet.</p> <p>18 So if you look at what is</p> <p>19 marked as page 1 on the document itself, if</p> <p>20 you look at the last two sentences, anywhere</p> <p>21 in the Eligibility to Apply For Accommodation,</p> <p>22 does it say anywhere in there that a medical</p> <p>23 student has to agree to terms and conditions</p> <p>24 in order to seek accommodations?</p>

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<p>1 A. You are saying anywhere in the entire 2 sheet?</p> <p>3 Q. I guess we're going to have to make sure 4 you can read this. I guess I could -- is the 5 best way to e-mail to you or do you want me to 6 scroll through it.</p> <p>7 A. Better if you e-mailed it.</p> <p>8 MS. VARGAS: I can hit reply 9 all. I see I have now gotten that document 10 from you, Syd. I see Mr. Flamini is in the 11 cc'd. I want to be careful about 12 communicating with a represented party.</p> <p>13 Do I have permission from you 14 to reply all with the document that we're 15 talking about?</p> <p>16 MR. STEELE: Yes. You're 17 sending that document --</p> <p>18 MS. VARGAS: Yes, without 19 comment, I am sending you the document that is 20 on the screen.</p> <p>21 My dogs are having a battle 22 in the hallway. So excuse that.</p> <p>23 MR. STEELE: Do you have any 24 sense about how much longer it is going to go?</p>	<p>1 MS. VARGAS: I think like 20 2 minutes.</p> <p>3 MR. STEELE: I do have some 4 questions as well.</p> <p>5 MS. VARGAS: Okay.</p> <p>6</p> <p>7 MR. STEELE: I know that the 8 witness can go a little beyond one, but we're 9 already at 1:30.</p> <p>10 What are your thoughts? Why 11 don't we go through this exhibit and then 12 we'll talk.</p> <p>13 MS. VARGAS: I think I am 14 almost done.</p> <p>15 THE WITNESS: You're asking 16 me about something that was contained here, 17 now that I have it in front of me, could you 18 repeat what --</p> <p>19 BY MS. VARGAS: 20 Q. Take a minute to look at it, and what my 21 question is going to be is, is there anywhere 22 in the Request For Test Accommodations 23 Instructions that it informs a medical student 24 that they are agreeing to any terms and</p>
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<p>1 conditions or Bulletin of Information at the 2 time that they are requesting accommodations?</p> <p>3 A. As I am reading through, on page 3, 4 Consideration Process, it indicates that 5 before request for test accommodations be 6 considered, you must complete, sign, and 7 submit the Request For Test Accommodations 8 application.</p> <p>9 That application, when you 10 open that, says that I agree to the NBOME 11 terms and conditions set forth in the BOI.</p> <p>12 So it is a requirement that 13 is linked to this document.</p> <p>14 Q. So I guess I don't have the document 15 you're talking about.</p> <p>16 You're saying there's on the 17 application for accommodations, would it 18 specify that a medical student would be 19 agreeing to certain terms and conditions as 20 part of applying for accommodations?</p> <p>21 A. That's correct. When you complete that 22 Request For Test Accommodations, you must 23 agree to the terms and conditions.</p> <p>24 Q. Do you have that on Ms. Lewis's</p>	<p>1 application for accommodations?</p> <p>2 A. Yes, I do. That is the one I am looking 3 at.</p> <p>4 Q. We would certainly like to see a copy of 5 that.</p> <p>6 Does that document specify 7 which Bulletin of Information the student is 8 agreeing to?</p> <p>9 A. It has, again, the date and time -- 10 excuse me, it has the date, and that would 11 tell you which Bulletin of Information you 12 were looking at.</p> <p>13 The Bulletin of Information 14 is generally a document that is in place 15 between July and June of a year, an academic 16 year. And that Bulletin of Information would 17 be referred back to.</p> <p>18 Q. And that Bulletin of Information would 19 be revised each July? A new one would take 20 effect each July; is that right?</p> <p>21 A. Yes.</p> <p>22 Q. Are the terms and conditions actually 23 listed on the Application For Accommodations 24 or do you have to go somewhere to see them?</p>

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<p>1 A. It indicates right there that the terms 2 and conditions set forth in Bulletin of 3 Information, you would be able to click and go 4 to the website, which is very well organized 5 to easily read through the Bulletin of 6 Information, and it opens with the terms and 7 conditions. 8 Q. And then the instructions provide 9 that -- can a student submit their Application 10 For Accommodations in paper through U.S. Mail 11 or is it only on the website? 12 A. They can print it out and submit it 13 through U.S. Mail. 14 Q. Where would they physically mail it to? 15 A. At this time, they mail it to the 16 Conshohocken office. 17 Q. If they submitted it via e-mail, what 18 e-mail would it go to? 19 A. There is a special mailbox that is test 20 accommodations. It would go to that. 21 Q. Who manages that or responds to things 22 coming in through that test accommodations 23 e-mail? 24 A. We have a manager of test accommodations</p>	<p>1 who would look at that and manage that. 2 Q. Who is that? 3 A. His name today is Todd Mendelson. Todd 4 Mendelson is our manager for test 5 accommodations. In 2017, that would have been 6 a different individual. 7 Q. Who would that have been in 2017? 8 A. I have to get you that name to confirm. 9 Q. The person you referenced who is 10 currently responding to the testing 11 accommodations e-mail, which office do they 12 work from? 13 A. Works here in our Conshohocken office in 14 Pennsylvania. 15 Q. What is your office called that manages 16 testing accommodations generally? I don't 17 know if I am referring to it by the right 18 department name. 19 A. Testing accommodations. 20 Q. It's just called testing accommodations? 21 Where is that housed? 22 A. Physically in the Conshohocken office on 23 the second floor. 24 Q. When Ms. Lewis's Request For</p>
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<p>1 Accommodations were denied, what office did 2 those denials come from? 3 A. Same office. 4 Q. In Pennsylvania? 5 A. Pennsylvania, yes. Actually, in the 6 case of -- it depends on the timing of her 7 request, because she had requested over a 8 period of time, so it is possible that that 9 had altered over that time. 10 Let me take a quick look. 11 The most recent event for her 12 was in 2019. That would have been here in 13 Conshohocken. If I went back to 2017, that 14 would have been a different individual, and in 15 fact, would have been in our Chicago office at 16 that time. 17 Q. The accommodations denials in 2019, in 18 October 2019, November 2019, and then in 19 March 2020, what office did those all come 20 from? 21 A. I believe they were all Conshohocken, 22 Pennsylvania. 23 Q. Who wrote those denials for the NBOME? 24 A. Those denials are -- I mentioned his</p>	<p>1 name -- Todd Mendelson would be organizing, 2 assembling that information. 3 You're talking about the 4 actual denial of accommodation letter? 5 Q. Yes. 6 A. Todd Mendelson would have organized 7 those letters? 8 Q. Who would have written those letters, 9 signed those letters? 10 A. Todd prepares the letters, drafts the 11 letters. They are reviewed, depending on the 12 circumstances, with general counsel, Doug 13 Murray, depending on the circumstances, and 14 it's based on the results of the committee 15 meeting. 16 Q. Is Mr. Murray authorized to practice law 17 in Indiana? 18 A. No, not to my knowledge. 19 Q. Looking at your executive committee of 20 the board, does anyone on the executive 21 committee of the board live or work in 22 Indiana? 23 A. I would have to take a look at that list 24 and go through to see if anybody does, and</p>

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<p>1 that executive board changes over time, 2 obviously. 3 I am not sure, to be honest. 4 I don't recall where they practice. I can 5 tell you some of them I know are not, but I 6 couldn't say to you absolutely, somebody was 7 in Indiana. 8 Q. Is Dr. David Kuo, K-U-O, on your 9 executive committee of the board right now? 10 A. Dr. Kuo is a member of our executive 11 board. 12 Q. Do you know where he lives? 13 A. He practices in Pennsylvania in one of 14 our medical schools. 15 Q. Are any of the individuals on the 16 NBOME's board of directors, are any of them 17 from Indiana? 18 A. Possibly. I could not state right off 19 the top of my head. I would have to look at 20 the list and analyze it a little bit. 21 Q. Is Dr. Richard Ortaski currently on your 22 board of directors? 23 A. He is. 24 Q. Do you know where he practices?</p>	<p>1 A. He practices at LECOM, the Lake Erie 2 College of Osteopathic Medicine. 3 Q. Is that in Pennsylvania? 4 A. It is. 5 Q. The NBOME has a client services number. 6 If I give you the number, 7 could you tell me where that number is 8 answered? 9 A. I can tell you what happens with that 10 number. There are two numbers. One is in the 11 Philadelphia area, and one is in Conshohocken, 12 but the answering of the phone depends on the 13 hunt sequence. Somebody could dial a Chicago 14 number, a 773 area code, and somebody in 15 Conshohocken could answer it, depending on who 16 is available. 17 Q. You testified earlier that if a student 18 had questions about the terms and conditions, 19 they could call the NBOME. 20 Would they be able to call 21 anyone in Indiana to ask those questions on 22 behalf of NBOME? 23 A. The call would come through to client 24 services, and that clients services would</p>
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<p>1 refer the question for answer. 2 Quite frankly, if it was a 3 detailed question, we might tap resources up 4 to and including legal counsel like Syd to 5 participate -- help us make sure we answer it 6 properly. 7 Q. Where are your exams graded? 8 A. They are graded in both Pennsylvania and 9 in Chicago. The computer-based exams are 10 graded in Chicago. 11 Q. At what locations do you offer your 12 COMLEX 2-PE? 13 A. COMLEX 2-PE is offered in the 14 Conshohocken office and our Chicago offices. 15 Q. Is it offered anywhere else? 16 A. Not at this time. 17 Q. Turning back to Exhibit-2, please. 18 We're almost done. Exhibit-2, I believe, is 19 the affidavit, Mr. Flamini, that you submitted 20 to your counsel -- submitted to the court 21 along with the Motion to Transfer. 22 A. Are you referring to the declaration? 23 Q. Yes. 24 A. Give me a moment.</p>	<p>1 Q. You and me both. Let me know when you 2 are ready. 3 A. Got it. 4 Q. Actually looking first at page -- the 5 first page of Exhibit-A, which looks to be 6 about the 9th page of the document, it says, 7 Terms and Conditions, at the top. 8 Is this the exact terms and 9 conditions that you contend Ms. Lewis saw and 10 consented to? 11 A. Ms. Lewis saw and consented to a number 12 of times. So I would need the exact -- which 13 date, which time, and I'd be able to tell you. 14 But I will tell you that 15 substantially, though, the answer is yes. 16 Things like the form selection clause have not 17 changed. None of that has changed. 18 Q. I notice that there is no date at the 19 bottom of this. 20 Was the date removed from 21 this document? 22 A. I don't believe it was removed. 23 Q. So looking at the Bulletin of 24 Information, which was Exhibit-3, if you look</p>

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<p>1 at page 5 of that, where it says, Terms and</p> <p>2 Conditions.</p> <p>3 At the bottom, it has a date.</p> <p>4 Why is it that Exhibit-A doesn't have a date</p> <p>5 like the Bulletin of Information that we were</p> <p>6 able to pull off the website?</p> <p>7 A. We organize the website very convenient</p> <p>8 for our candidates to be able to pull copies</p> <p>9 and to organize it, so that they can quickly</p> <p>10 access information.</p> <p>11 This document listed because</p> <p>12 if somebody is printing it, we want to know</p> <p>13 when they printed it. If you brought this to</p> <p>14 me and showed it to me, I would know when you</p> <p>15 accessed it, what version it was.</p> <p>16 Q. Looking at Exhibit-A then of your</p> <p>17 declaration, there is no way of knowing what</p> <p>18 date, what version of the terms and conditions</p> <p>19 this was, just looking at this page, is there?</p> <p>20 A. As you point out, just looking at this</p> <p>21 page, that is correct. Certainly, we could</p> <p>22 provide you easily for any date and time the</p> <p>23 exact terms and conditions that were agreed</p> <p>24 to.</p>	<p>1 Q. Can you provide the terms and conditions</p> <p>2 with Ms. Lewis's consent on it, on that</p> <p>3 document or image?</p> <p>4 A. I can provide you the date, time, down</p> <p>5 to the second, that she pushed the button that</p> <p>6 said, I agree to terms and conditions.</p> <p>7 I am not sure there is an</p> <p>8 electronic document as you point out. I can</p> <p>9 provide you the actual time she did, down to</p> <p>10 the second, that she pushed the button, down</p> <p>11 to the software, but I don't know that there</p> <p>12 is an image for every candidate that pushes</p> <p>13 the button.</p> <p>14 Q. And for this specific Exhibit A of your</p> <p>15 declaration, do you know what date these terms</p> <p>16 and conditions were, this document is?</p> <p>17 A. I am not sure which one of her exams it</p> <p>18 was. Again, substantially, it has not changed</p> <p>19 over the course of her times doing so.</p> <p>20 Q. Is this an example of what a medical</p> <p>21 student might have signed or are you saying</p> <p>22 that this is exactly what she signed?</p> <p>23 A. She signed seven times.</p> <p>24 Q. She signed what?</p>
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<p>1 A. She agreed to the terms and conditions.</p> <p>2 Q. You testified that the terms and</p> <p>3 conditions have changed, and that the Bulletin</p> <p>4 of Information changes every July.</p> <p>5 MR. STEELE: That was not his</p> <p>6 testimony. You misstated it. He hasn't said</p> <p>7 the terms and conditions change. He said the</p> <p>8 Bulletin of Information changes?</p> <p>9 BY MS. VARGAS:</p> <p>10 Q. I think we are all familiar with what</p> <p>11 evidence is. It's the actual thing that</p> <p>12 somebody signed, whether electronic or not</p> <p>13 electronic.</p> <p>14 What I am asking is, is</p> <p>15 Exhibit-A the actual evidence of what you</p> <p>16 maintain Ms. Lewis signed? Is her signature</p> <p>17 on here somewhere?</p> <p>18 A. Obviously, it is not. I don't see it</p> <p>19 appear anywhere. I can tell you that the</p> <p>20 system captures the date and time that she</p> <p>21 agrees to this document.</p> <p>22 Q. How does it capture that?</p> <p>23 A. The same way that if you purchase</p> <p>24 something on Amazon, it captures your time</p>	<p>1 that you agree to purchase the item. The</p> <p>2 software records the moment it happens.</p> <p>3 And you're unable to proceed</p> <p>4 unless you do agree. You're unable to</p> <p>5 proceed. She would have never purchased an</p> <p>6 examination unless she had agreed. It is</p> <p>7 impossible to do so.</p> <p>8 Q. So she didn't have a choice not to</p> <p>9 agree, then?</p> <p>10 A. She certainly has a choice. She can</p> <p>11 make a decision what she wants to do. But for</p> <p>12 her to proceed in the process of either</p> <p>13 registering or purchasing the exam, she must</p> <p>14 agree.</p> <p>15 Q. Turning to Exhibit-B of your</p> <p>16 declaration, starting at page 11 of 19, we</p> <p>17 talked about this page a little bit before.</p> <p>18 This is not -- just to make</p> <p>19 sure I understand what this is, page 11 is not</p> <p>20 the exact screenshot that Ms. Lewis saw. This</p> <p>21 is an example of what a student might have</p> <p>22 seen with some commentary and colors and</p> <p>23 arrows added by NBOME?</p> <p>24 A. Exactly. This is a screenshot of what a</p>

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<p style="text-align: right;">Page 141</p> <p>1 student sees when they register, not Sharmaine 2 Lewis. 3 Q. And then turning to page 12 of 19, 4 again, is this the actual screen that Ms. 5 Lewis saw, or is it an example of what a 6 student might see today if they registered for 7 the exam? 8 A. This is an example of what Sharmaine 9 Lewis would have seen. 10 Q. When you say that she saw this, would it 11 have had these red arrows on it? 12 A. No, these are enhancements to describe 13 to you what she is doing. 14 Q. Who provided the enhancements to this 15 document? 16 A. I think this whole series of screenshots 17 were provided by our AVP for IT, our IT 18 director, who pulled this information for us. 19 I subsequently went through 20 personally the same process to make sure that 21 I saw myself what a candidate goes through, 22 just to confirm these, and I find them all to 23 be completely accurate. 24 Q. Did you go through what a candidate</p>	<p style="text-align: right;">Page 142</p> <p>1 would have seen, say, in 2017? 2 A. I went through our portal, and our 3 portal has not changed any substantial matter 4 over these past few years. The portal is 5 similar. The portal is used when a candidate 6 either registers or purchases an exam. 7 Q. So you brought up the example of if I 8 were to go onto Amazon and purchase something. 9 If I were to go onto Amazon 10 and purchase something, I could then go into 11 my account and print out the exact order that 12 I had, and how much I agreed to pay, and there 13 is a receipt, and that is all specific to me. 14 As I am understanding what 15 Exhibit-B is, all of Exhibit-B, is it accurate 16 to say that Exhibit-B is not specific to Ms. 17 Lewis, it is what a medical student might have 18 seen in 2020 with enhancements? 19 A. That's correct. You would want to go to 20 our attachment -- excuse me -- Exhibit -- I 21 think for this deposition -- 6, it was? 22 That would be analogous to 23 what you just suggested. It would show all of 24 her purchases for Sharmaine Lewis. That was</p>
<p style="text-align: right;">Page 143</p> <p>1 that document we looked at a few minutes ago. 2 Q. Looking on page 13 of 19, was this 3 document enhanced in any way, or is this how a 4 medical student in 2020 might have seen their 5 screen appear when they registered? 6 A. I am looking at it. I don't see -- I 7 think we did shrink it down to fit the page 8 for you. There might have been a little bit 9 more information. This is her shopping cart. 10 Q. Is this her shopping cart or is this a 11 generic shopping cart that someone generated 12 for the purpose of litigation? 13 A. It is a generic shopping cart to 14 demonstrate to you that it was impossible for 15 Sharmaine Lewis not to proceed through the 16 process without agreeing to the terms and 17 conditions. 18 Q. Where it says, Shopping Cart, displayed 19 at the top, was that added to this? 20 A. That's correct. That was added, that 21 comment at the top. I am speaking for 22 everything NBOME down. 23 Q. Looking at page 14 then, I see two 24 arrows.</p>	<p style="text-align: right;">Page 144</p> <p>1 Are those arrows enhancements 2 that were added for purposes of litigation? 3 A. These are enhancements to help you 4 understand what we were displaying for you. 5 So you see the first arrow 6 shows an error occurred. The candidate is 7 trying to proceed to payment, and the error 8 says, you cannot proceed to payment without 9 clicking View Terms and Conditions. 10 Q. So where it says, must click this link 11 to be taken to the terms and conditions page, 12 is that something that actually appears on the 13 screen? 14 A. It is not. That is an enhancement to 15 describe to you. 16 Up above though, where it 17 says, one error occurred. To purchase COMLEX 18 examinations, you must agree to the terms and 19 conditions by clicking on the link. 20 The arrows were added, and 21 that description down at the bottom was added, 22 but that error message is an actual error 23 message. 24 Q. Is it accurate to say that Ms. Lewis</p>

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<p>1 never saw page 14 as it appears in your 2 declaration?</p> <p>3 A. Ms. Lewis never saw page 14 in the 4 declaration with the arrows added. She did 5 see a page that had everything else on it when 6 she went through her process.</p> <p>7 Q. How do you know that she saw a page that 8 looked like this?</p> <p>9 A. Because the software -- the series of 10 pages we're showing you is software -- the way 11 it displays to a candidate as they walk 12 through the process.</p> <p>13 Which is why I personally 14 went back in to say, let me experience it 15 myself and make sure I understood the process, 16 but I wanted to do it myself, which I did.</p> <p>17 And I went through each of 18 these steps myself, so I know that she had to 19 go through these steps in order to accomplish 20 what shows up on her transaction sheet that 21 she purchased an exam, and she registered.</p> <p>22 Q. What date did you do that?</p> <p>23 A. I did that in the last week.</p> <p>24 Q. Looking at page 15, this is not the</p>	<p>1 screen Ms. Lewis saw in 2017, is it?</p> <p>2 A. She would not have seen this screen, 3 because it has enhancements on it.</p> <p>4 Q. Is the same true of page 16?</p> <p>5 A. From the logo down, NBOME down, this is 6 what you see. If she had clicked on View 7 Terms and Conditions, this is what she would 8 have seen, from the NBOME logo down.</p> <p>9 Certainly, she would not have 10 seen the case number, obviously, nor would she 11 have seen this is the terms and conditions 12 that is displayed.</p> <p>13 Everything else, there are no 14 additions to it. You see the buttons at the 15 bottom, agree or disagree.</p> <p>16 Q. Looking at page 16, what was the date 17 this screenshot was taken?</p> <p>18 A. This screenshot was taken during the 19 past two months.</p> <p>20 Q. Page 17? Are there enhancements on 21 page 17 from what Ms. Lewis or what you 22 maintain Ms. Lewis would have seen?</p> <p>23 A. Again, from the logo down, I don't see 24 any enhancements, so if Ms. Lewis was to go</p>
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<p>1 and purchase the exam, which she did, she 2 would have seen this page.</p> <p>3 Q. Page 18, has the NBOME altered the 4 screenshot from 2020 in order to enhance this 5 page?</p> <p>6 A. We enhanced it by adding that little 7 arrow at the bottom to make sure you saw the 8 agree to terms.</p> <p>9 Q. The language across the top? Is that 10 something that was added?</p> <p>11 A. She would not have seen anything across 12 the top below the NBOME logo.</p> <p>13 Q. Who wrote the language across the top?</p> <p>14 A. That would have been Steve Basile, who 15 was providing us this series of images just to 16 describe what he was showing us.</p> <p>17 Q. And is that your IT person?</p> <p>18 A. That is my assistant vice president for 19 IT.</p> <p>20 Q. Did he do this for purposes of the Lewis 21 litigation?</p> <p>22 A. He did.</p> <p>23 Q. Going to page 19, again, this is not a 24 screenshot of what Ms. Lewis saw, is it?</p>	<p>1 A. Not with the enhanced arrows or 2 description at lower bottom. Everything above 3 the NBOME logo would not have been there, and 4 the arrows would not have been there nor that 5 description. What is important on this 6 document is you see the word, view terms, has 7 changed to agreed, and that would allow Ms. 8 Lewis to proceed to payment.</p> <p>9 MS. VARGAS: I would like to 10 take a very quick break. Like two minutes. 11 - - - 12 (Whereupon a short break was taken at this 13 time.) 14 - - - 15 BY MS. VARGAS: 16 Q. Mr. Flamini, I am almost done. I wanted 17 to look again at what I am screen sharing, 18 which is page 11 of 19. It is part of 19 Exhibit-B from your declaration that you 20 submitted to the court.</p> <p>21 Looking at this page, do you 22 see where it says, name?</p> <p>23 A. Yes, okay.</p> <p>24 Q. What name does it have?</p>

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<p>1 A. Steve.</p> <p>2 Q. It does not have Ms. Lewis's name</p> <p>3 anywhere on this document; does it?</p> <p>4 A. That's correct.</p> <p>5 Q. Where it says, gender, what gender is</p> <p>6 selected.</p> <p>7 A. I don't see it, but if you highlight</p> <p>8 it --</p> <p>9 It says male.</p> <p>10 Q. Is any of Ms. Lewis's information on</p> <p>11 this document?</p> <p>12 A. I do not believe so.</p> <p>13 Q. Does the NBOME have a screenshot of this</p> <p>14 document with Ms. Lewis's information on it?</p> <p>15 A. We would be able to pull for you the</p> <p>16 information that she supplied. I am not sure</p> <p>17 if it can be presented as a screenshot, but we</p> <p>18 certainly can provide you all of the same</p> <p>19 information, her ID number, her name, gender,</p> <p>20 etc.</p> <p>21 Q. I am not asking for that information.</p> <p>22 I am asking, does the NBOME</p> <p>23 have an image, a picture, a screenshot? In</p> <p>24 any way, has the NBOME retained this -- what</p>	<p>1 we're seeing on page 11 as Ms. Lewis filled it</p> <p>2 out, as opposed to Steve?</p> <p>3 A. Yeah, as you describe it, a screenshot</p> <p>4 is a moment in time that somebody takes the</p> <p>5 image.</p> <p>6 We do not save individual</p> <p>7 images. This does represent the process she</p> <p>8 went through and had to go through in order to</p> <p>9 register and take the exam -- and representing</p> <p>10 that she had to accept the terms and</p> <p>11 conditions, had to agree to the terms and</p> <p>12 conditions each time.</p> <p>13 MS. VARGAS: I don't have any</p> <p>14 further questions at this time.</p> <p>15 - - -</p> <p>16 EXAMINATION</p> <p>17 - - -</p> <p>18 BY MR. STEELE:</p> <p>19 Q. A few questions, Mr. Flamini.</p> <p>20 Exhibit-B that is pulled up</p> <p>21 here, what is the purpose of attaching this</p> <p>22 Exhibit-B to your declaration?</p> <p>23 A. It is to demonstrate that a candidate</p> <p>24 cannot register nor schedule an examination</p>
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<p>1 without agreeing to the terms and conditions.</p> <p>2 Q. This is not intended to be Ms. Lewis's</p> <p>3 screenshot as she actually saw it with the</p> <p>4 names and all that sort with her name on it?</p> <p>5 A. That's correct.</p> <p>6 Q. But nonetheless, looking at Exhibit-B on</p> <p>7 page 11, the first page there, what, in fact,</p> <p>8 did Ms. Lewis see when she went on the</p> <p>9 registration system to register for the exam?</p> <p>10 MS. VARGAS: I'm going to</p> <p>11 object, for the record, to foundation.</p> <p>12 THE WITNESS: Ms. Lewis saw</p> <p>13 an identical page with the exception of that</p> <p>14 special note that has been added most recently</p> <p>15 for COVID, Ms. Lewis would have seen the same</p> <p>16 page with the tabs across the top --</p> <p>17 MR. STEELE: My Internet</p> <p>18 connection is unstable, it says. Did you get</p> <p>19 that testimony, Madam Reporter?</p> <p>20 COURT REPORTER: It was cut</p> <p>21 off.</p> <p>22 MR. STEELE: Would you read</p> <p>23 the question again.</p> <p>24 - - -</p>	<p>1 (Whereupon the Court Reporter read back the</p> <p>2 testimony.)</p> <p>3 - - -</p> <p>4 THE WITNESS: What I was</p> <p>5 saying is, with the exception of the special</p> <p>6 note that was added concerning COVID, she</p> <p>7 would not have seen that.</p> <p>8 And she certainly did not see</p> <p>9 the arrow or the explanation to describe what</p> <p>10 this document is.</p> <p>11 But she did see all of the</p> <p>12 other fields and information she had the tabs</p> <p>13 across the top to select from.</p> <p>14 BY MR. STEELE:</p> <p>15 Q. What was the purpose of putting the</p> <p>16 arrow in the comments, with the arrow on this</p> <p>17 Exhibit-B?</p> <p>18 A. That was to help all who were viewing it</p> <p>19 understand what this document means.</p> <p>20 And in this case, the tab</p> <p>21 showed that the candidate had the opportunity</p> <p>22 to register for the exam.</p> <p>23 Q. On the next page, page 12, what, in</p> <p>24 fact, did Ms. Lewis see when she went in to</p>

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<p>1 register for the exam, the multiple times for</p> <p>2 the Level 2-CE exam and the Level 1 exam?</p> <p>3 A. Again, she would not have seen the</p> <p>4 arrows or the explanation. The explanation is</p> <p>5 telling us that placing a check mark in the</p> <p>6 exam is adding it to your cart. It describes</p> <p>7 how the candidate would have used this page.</p> <p>8 But this page, other than</p> <p>9 those arrows and that explanation, is what</p> <p>10 Sharmaine Lewis would have seen. She would</p> <p>11 have clicked on Level 1 exam and added it to</p> <p>12 her cart.</p> <p>13 Q. The same question with regard to</p> <p>14 page 13, what in fact would Ms. Lewis have</p> <p>15 seen when she registered to take the COMLEX</p> <p>16 exam?</p> <p>17 MS. VARGAS: Objection to all</p> <p>18 of these questions as they relate to the</p> <p>19 foundation, and Mr. Flamini is offering</p> <p>20 testimony about what somebody else saw. I</p> <p>21 would just leave that objection standing, so I</p> <p>22 don't have to interrupt this line of</p> <p>23 questioning.</p> <p>24 MR. STEELE: I'm asking what</p>	<p>1 did Ms. Lewis see when she viewed this</p> <p>2 screenshot.</p> <p>3 MS. VARGAS: That is what I</p> <p>4 am objecting to, to be clear, and I maintain</p> <p>5 that objection to this line of questioning to</p> <p>6 the extent that you're asking Mr. Flamini to</p> <p>7 testify as to what another human being saw.</p> <p>8 THE WITNESS: Based on my</p> <p>9 knowledge of our portal system, the client</p> <p>10 service registration system, the way it is</p> <p>11 programmed, the way it functions, my</p> <p>12 experience looking at that document</p> <p>13 personally, I can say that Ms. Lewis would</p> <p>14 have seen this page, her shopping cart, and</p> <p>15 she would have had the decision to make on</p> <p>16 proceeding to payment for her examination.</p> <p>17 BY MR. STEELE:</p> <p>18 Q. Is that true for all of the screenshots</p> <p>19 that are part of Exhibit-B of Exhibit-2?</p> <p>20 A. Yes, it is.</p> <p>21 Q. Looking at page 14 of this exhibit,</p> <p>22 what, in fact, did Ms. Lewis see when she went</p> <p>23 in to register for the COMLEX USA exams?</p> <p>24 A. Ms. Lewis would not have seen the</p>
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<p>1 arrows, would not have seen the description at</p> <p>2 the bottom. She would have seen everything</p> <p>3 below NBOME, and in her case, if she attempted</p> <p>4 to move forward without viewing the terms and</p> <p>5 conditions, she would have seen the error</p> <p>6 message that appeared there.</p> <p>7 Q. How do you know that?</p> <p>8 A. I personally went through and tested the</p> <p>9 system myself after querying my IT staff, my</p> <p>10 IT leadership, to confirm for me how it works.</p> <p>11 Once that was all done, I</p> <p>12 went into the system and did it personally,</p> <p>13 and I tried it different ways and attempted to</p> <p>14 go in different ways, and I experienced what</p> <p>15 Ms. Lewis would have experienced, the</p> <p>16 inability to proceed without agreeing to</p> <p>17 terms.</p> <p>18 Q. What we see here with the enhancements</p> <p>19 for purposes of explanation added only, would</p> <p>20 this have been true when Ms. Lewis looked at</p> <p>21 the screen to register for COMLEX exams?</p> <p>22 A. To clarify, you said, without the</p> <p>23 enhancements?</p> <p>24 Q. Without the enhancements.</p>	<p>1 A. This is what Ms. Lewis would have seen,</p> <p>2 when she went to the page, in this case the</p> <p>3 shopping cart page on page 14, this is exactly</p> <p>4 what she would have seen.</p> <p>5 Q. Turning to page 15, what exactly did</p> <p>6 Ms. Lewis see when she went in to register for</p> <p>7 COMLEX exams?</p> <p>8 A. In this case, you see the arrow. That</p> <p>9 would not have been there. Clicking on view</p> <p>10 terms. That would not have been there. This</p> <p>11 was all the opportunity to explain to folks</p> <p>12 what this page means. Everything from the</p> <p>13 logo down otherwise, she would have seen. She</p> <p>14 would have seen the ability to proceed to</p> <p>15 payment.</p> <p>16 And after she viewed terms.</p> <p>17 You cannot proceed to payment when it says,</p> <p>18 view terms, because it means you have not yet</p> <p>19 taken that opportunity to review the terms and</p> <p>20 conditions.</p> <p>21 Q. And those terms and conditions that --</p> <p>22 when Ms. Lewis clicked upon view terms,</p> <p>23 looking at Bates-16, is that what she would</p> <p>24 have seen?</p>

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<p style="text-align: right;">Page 157</p> <p>1 A. That is correct. That page pops up, and</p> <p>2 she gets the opportunity to see all 13 items</p> <p>3 that are displayed on page 16 and has the</p> <p>4 opportunity to click on agree to terms.</p> <p>5 Q. She had a choice of either agree to</p> <p>6 terms or to disagree to terms?</p> <p>7 A. That's correct.</p> <p>8 Q. If she clicked disagree to terms, what</p> <p>9 would have happened?</p> <p>10 A. She would have come back to the page,</p> <p>11 and it would have said, view terms, again.</p> <p>12 As it notes at the top there,</p> <p>13 if a candidate clicks on disagree to terms,</p> <p>14 they are taken back to the shopping cart, as</p> <p>15 you see it here, and the view terms is still</p> <p>16 displayed. You cannot proceed.</p> <p>17 Q. If she had clicked agreed to terms, what</p> <p>18 would have happened?</p> <p>19 A. I believe that is what is displayed on</p> <p>20 page 19. The word would have changed under</p> <p>21 view terms. That changes to agreed.</p> <p>22 Q. So she would have known that she agreed</p> <p>23 to the terms before she could proceed and</p> <p>24 purchase the exam?</p>	<p style="text-align: right;">Page 158</p> <p>1 A. Clearly, yes.</p> <p>2 Q. This happened multiple times; is that</p> <p>3 correct?</p> <p>4 Looking at Exhibit-A of your</p> <p>5 declaration -- do you have that?</p> <p>6 A. Yes.</p> <p>7 Q. With regard to the COMLEX Level 2-CE</p> <p>8 exams that Ms. Lewis purchased in 2018 and</p> <p>9 2019, is it possible for Ms. Lewis to have</p> <p>10 purchased those exams, registered for those</p> <p>11 exams, without agreeing to the terms and</p> <p>12 conditions that are on Exhibit-A?</p> <p>13 A. That is not possible. She had to agree</p> <p>14 to these terms and conditions.</p> <p>15 Q. Based upon your background, your</p> <p>16 knowledge, of the systems of the NBOME, the</p> <p>17 people that work for you, did Ms. Lewis agree</p> <p>18 to these terms and conditions that are marked</p> <p>19 as Exhibit-A each time she registered to take</p> <p>20 the COMLEX Level 2-CE exam?</p> <p>21 A. Yes, she had to agree to these terms and</p> <p>22 conditions. She did agree to these terms and</p> <p>23 conditions.</p> <p>24 Q. You were asked by Counsel whether or not</p>
<p style="text-align: right;">Page 159</p> <p>1 the NBOME may have required the student to</p> <p>2 take the COMLEX 2-CE to graduate.</p> <p>3 Does NBOME determine what is</p> <p>4 required for graduation or is that by the</p> <p>5 school or somebody else?</p> <p>6 A. It's a good point. It's actually not</p> <p>7 our decision at all. It is up to the college</p> <p>8 of osteopathic medicine to make that</p> <p>9 determination. We make the exam available to</p> <p>10 them.</p> <p>11 Q. Did you receive any objections or any</p> <p>12 inquiries whatsoever from Ms. Lewis, the</p> <p>13 plaintiff in this case, at any time regarding</p> <p>14 the terms and conditions that she agreed to,</p> <p>15 that she had to agree to, and did, in fact,</p> <p>16 agree to?</p> <p>17 A. We received no such request from</p> <p>18 Sharmaine Lewis.</p> <p>19 Q. If you would look at Exhibit-6, I</p> <p>20 believe it is -- that's the screenshot of her</p> <p>21 history.</p> <p>22 Do you have that?</p> <p>23 A. I have it in front of me.</p> <p>24 Q. With regard to those dates that are on</p>	<p style="text-align: right;">Page 160</p> <p>1 there, each time that Ms. Lewis, the</p> <p>2 plaintiff, registered to take the exam, is</p> <p>3 that what is under request, create date?</p> <p>4 A. That's correct.</p> <p>5 Q. And each time that she requested the</p> <p>6 exam, is that when she would have to go</p> <p>7 through the CRS system to register for the</p> <p>8 exam?</p> <p>9 A. To register and/or to purchase an actual</p> <p>10 examination.</p> <p>11 Q. To do that, she had to agree to the</p> <p>12 terms and conditions that is marked as</p> <p>13 Exhibit-A without before she could proceed.</p> <p>14 A. It is impossible for her to proceed</p> <p>15 without agreeing to those terms and</p> <p>16 conditions.</p> <p>17 Q. This question is related to the board of</p> <p>18 directors.</p> <p>19 Isn't it true, Mr. Flamini,</p> <p>20 that the board of directors of NBOME are</p> <p>21 located all over the country?</p> <p>22 A. Yes, it is.</p> <p>23 Q. Not just in Pennsylvania?</p> <p>24 A. Not just in Pennsylvania, not in</p>

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<p>1 Illinois, they come from all over the country.</p> <p>2 Q. How long has the NBOME been incorporated</p> <p>3 in the State of Indiana?</p> <p>4 A. At least the last few decades, and I</p> <p>5 know the origins go back to 1934, maybe as far</p> <p>6 as back as that.</p> <p>7 MR. STEELE: Thank you, Mr.</p> <p>8 Flamini. That is all of the questions I have.</p> <p>9 MS. VARGAS: I have a</p> <p>10 follow-up on that, Mr. Flamini.</p> <p>11 - - -</p> <p>12 EXAMINATION</p> <p>13 - - -</p> <p>14 BY MS. VARGAS:</p> <p>15 Q. Aside from the NBOME's outside counsel,</p> <p>16 Mr. Steele, does the NBOME have anything else</p> <p>17 in Indiana?</p> <p>18 A. Not to the best of my knowledge.</p> <p>19 MS. VARGAS: Thank you.</p> <p>20 COURT REPORTER: Would</p> <p>21 Counsel like a copy of the transcript.</p> <p>22 MR. STEELE: Let me get back</p> <p>23 to you on that. I will get back to you. I</p> <p>24 have your e-mail.</p>	<p>1 MR. WEINER: How soon can we</p> <p>2 get it?</p> <p>3 COURT REPORTER: Monday.</p> <p>4 - - -</p> <p>5 (Whereupon the deposition</p> <p>6 concluded at 2:30 p.m.)</p> <p>7 - - -</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>
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<p>1 Read your deposition over carefully. It is</p> <p>2 your right to read your deposition and make</p> <p>3 changes in form or substance. You should</p> <p>4 assign a reason in the appropriate column on</p> <p>5 the errata sheet for any change made. After</p> <p>6 making any change in form or substance which</p> <p>7 has been noted on the following errata sheet</p> <p>8 along with the reason for any change, sign</p> <p>9 your name on the errata sheet and date it.</p> <p>10 Then sign your deposition at the end of your</p> <p>11 testimony in the space provided. You are</p> <p>12 signing it subject to the changes you have</p> <p>13 made in the errata sheet, which will be</p> <p>14 attached to the deposition before filing. You</p> <p>15 must sign it in front of a witness. Have the</p> <p>16 witness sign in the space provided. The</p> <p>17 witness need not be a notary public. Any</p> <p>18 competent adult may witness your signature.</p> <p>19 Return the original errata sheet & transcript</p> <p>20 to deposing attorney, (attorney asking</p> <p>21 questions) promptly. Court rules require</p> <p>22 filing within 30 days after you receive the</p> <p>23 deposition. Thank you.</p> <p>24</p>	<p>1 CERTIFICATE</p> <p>2 - - -</p> <p>3 I, Jeannine Cancelliere, Court</p> <p>4 Reporter and Notary Public and for</p> <p>5 Philadelphia, Pennsylvania, do hereby certify</p> <p>6 that the foregoing testimony of JOSEPH</p> <p>7 FLAMINI, was taken before me via Zoom on</p> <p>8 Tuesday, November 10, 2020; that the foregoing</p> <p>9 testimony was taken by me in shorthand by</p> <p>10 myself and reduced to typing under my</p> <p>11 direction and control, that the foregoing</p> <p>12 pages contain a true and correct transcription</p> <p>13 of all of the testimony of said witness.</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>